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Supreme Court, U.S.
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No. 93-1472

In The

Supreme Court of the United States

October Term, 1993

WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; AND P. DOUGLAS TAYLOR, WARDEN LIEBER CORRECTIONAL INSTITUTION,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS, JAMES ISLAND PUBLIC SERVICE DISTRICT; ITS COMMISSIONERS; ROBERT E. WELCH; AND EDWIN B. QUINN

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QUESTIONS PRESENTED

The Respondents, James Island Public Service District; George W. Flynn; George W. Witham; Barbara M. Ladson; Sylvia F. Peters; John B. Bryant; Nancy H. Hadley; Ray J. Patterson, Jr., Constituting the Membership of the Commissioners of the James Island Public Service District; Robert E. Welch, Manager, James Island Public Service District; and Edwin B. Quinn, Wastewater Superintendent, James Island Public Service District, believe that the only questions presented, as they relate to them, are properly stated as follows:

I. Whether the lower courts were correct in holding that the Petitioner's Complaint failed to allege facts indicating that these Respondents caused his incarceration thereby eliminating any liability under 42 *U.S.C.* § 1983?

II. Whether the lower courts were correct in holding that the Petitioner's claims that certain legislative acts and statutes were unconstitutional were barred by the doctrine of *res judicata*?

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WILBURT A. SEIGEL,

Petitioner,

v.

JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON,JR., CONSTITUTING THE MEMBERSHIP OF THE COMMISSIONERS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT; ROBERT E. WELCH, MANAGER, JAMES ISLAND PUBLIC SERVICE DISTRICT; EDWIN B. QUINN, WASTEWATER SUPERINTENDENT, JAMES ISLAND PUBLIC SERVICE DISTRICT; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, JUDGE; J. ALTON CANNON, JR., SHERIFF, CHARLESTON COUNTY; ROBERT MILLER, JR., UNDERSHERIFF, CHARLESTON COUNTY; SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; AND P. DOUGLAS TAYLOR, WARDEN LIEBER CORRECTIONAL INSTITUTION,

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The Respondents, James Island Public Service District; George W. Flynn; George W. Witham; Barbara M. Ladson; Sylvia F. Peters; John B. Bryant; Nancy H. Hadley; Ray J. Patterson, Jr., Constituting the Membership of the Commissioners of the James Island Public Service District; Robert E. Welch, Manager, James Island Public Service District; and Edwin B. Quinn, Wastewater Superintendent, James Island Public Service District (collectively "JIPSD"), respectfully request that the Court deny the Petition for a Writ of Certiorari of the Petitioner, Wilburt A. Seigel.

OPINIONS AND JUDGMENTS BELOW

The United States Court of Appeals for the Fourth Circuit, on November 10, 1993, affirmed the Order dismissing the Petitioner's Complaint issued by the United States District Court for the District of South Carolina, Charleston Division, on January 10, 1992.

The Opinion of the United States Court of Appeals for the Fourth Circuit is an unpublished, *per curiam* opinion, *Seigel v. James Island Public Service District, et al.*, No. 92-1204 (4th Cir. Nov. 10, 1992), and is found in Appendix A of Petitioner's Petition for Writ of Certiorari, at pages 1-A through 3-A.

The Order of the District Court is not separately published, but has been set out in Appendix B of Petitioner's Petition for Writ of Certiorari, at pages 6-A through 9-A. The District Court adopted, as its Order, the Report and Recommendation of the United States Magistrate Judge which had been rendered on August 5, 1991.

That Report and Recommendation is found in Appendix C of Petitioner's Petition for Writ of Certiorari, at pages 10-A through 47-A.

The Petitioner's Petition for Rehearing was denied by the Fourth Circuit on December 16, 1993. The Order denying the Petition for Rehearing is found in Appendix A to Petitioner's Petition for Writ of Certiorari, at page 4-A.

JURISDICTION

Petitioner cites as his jurisdictional basis 28 *U.S.C.* § 1257(3). A review of that statute indicates that no such subsection exists. In addition, 28 *U.S.C.* § 1257 does not apply to this case, since the *per curiam* unpublished opinion below was rendered by a federal court of appeals, not a state court. *See, Illinois v. Gates*, 462 U.S. 213, 217-221 (1983).

Presumably, Petitioner means to rely on 28 *U.S.C.* § 1254(1) to provide his jurisdictional basis. This case, however, does not present any special or important reason warranting this Court to grant certiorari. *Sup. Ct. R.* 10. Specifically, the decision of the United States Court of Appeals for the Fourth Circuit herein does not conflict with either the decision of another United States Court of Appeals, *Waterman, S.S. Corp. v. United States*, 381 U.S. 252 (1965), or with the decisions of this Court. *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966). In addition, the decision below does not decide an important question of federal law which has not been, but should be, settled by this Court. *Glus v. Brooklyn Eastern Dist. Terminal*, 359 U.S. 231

(1959). Moreover, the decisions of the lower courts do not depart from, or sanction a departure from, the accepted and usual course of judicial proceedings. The Court should deny the Petition for Writ of Certiorari filed by the Petitioner.

STATUTORY PROVISIONS INVOLVED

42 *U.S.C.* § 1983, which provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

STATEMENT OF THE CASE

This is a *pro se* civil rights action by the Petitioner against, *inter alia*, the Respondents, James Island Public Service District; George W. Flynn; George W. Witham; Barbara M. Ladson; Sylvia F. Peters; John B. Bryant; Nancy H. Hadley; Ray J. Patterson, Jr., Constituting the Membership of the Commissioners of the James Island Public Service District; Robert E. Welch, Manager, James Island Public Service District; and Edwin B. Quinn, Wastewater Superintendent, James Island Public Service District. The Petitioner's action against the JIPSD arose

out of his incarceration at Lieber Correctional Institution ("Lieber") on January 11, 1989, pursuant to the Order of the Respondent, the Honorable William T. Howell ("Judge Howell"). Judge Howell issued an order on January 6, 1989, incarcerating the Petitioner for his willful failure to connect to a sewer line maintained by the JIPSD. The Petitioner claimed that the Order was "suspect, unfair, and violative of his civil rights." The JIPSD's motion to dismiss was principally based on the Petitioner's failure to state a claim upon which relief could be granted.

In 1984, the JIPSD instituted a suit against the Petitioner in the Charleston County Court of Common Pleas.[1] The JIPSD sought and was granted an injunction requiring the Petitioner to connect to its municipal sewer system. The South Carolina Court of Appeals affirmed an Order granting the injunction on March 25, 1987.[2] Judgment was entered against the Petitioner on that date.

Subsequently, in 1988, the JIPSD filed a Rule to Show Cause Why an Order should not be issued finding the Petitioner in contempt of Court for his failure to comply with the March 25, 1987, Order of Judgment. On October 26, 1988, Judge Howell found the Petitioner in contempt of Court for his voluntary failure to comply with the March 25, 1987, Order. Judge Howell sentenced the Petitioner to six (6) months in jail, but granted him sixty (60)

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[1] *See, James Island Public Service District v. Wilburt A. Seigel* (Civil Action No. 84-CP-10-3476, Charleston County Court of Common Pleas) (*"JIPSD v. Seigel"*).

[2] *See, James Island Public Service District v. Wilburt A. Seigel* (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987).

days to hook up to the JIPSD's sewer system, in order to avoid incarceration. The Petitioner petitioned the South Carolina Supreme Court for a Writ of Supersedeas to stay Judge Howell's contempt sentence. The Supreme Court denied that Petition on December 16, 1988.

The Petitioner voluntarily chose not to comply with the contempt order by hooking up to the JIPSD sewer system. On January 6, 1989, Judge Howell ordered the Petitioner to begin serving his contempt sentence on January 11, 1989. The Respondent, J. Alton Cannon, transported the Petitioner to Lieber and relinquished custody to the Respondent, South Carolina Department of Corrections. The Petitioner served only one (1) night at Lieber before he was released. Thereafter, on February 16, 1989, Judge Howell modified the sentence, substituting a monetary fine in lieu of incarceration.

On January 3, 1991, the Petitioner filed this action alleging, *inter alia*, violation of 42 *U.S.C.* § 1983. Among the Defendants named in this action were the JIPSD, its Commissioners, Welch, and Quinn. Those parties, as well as, all other Respondents, filed Motions to Dismiss pursuant to Rule 12(b), *FRCP*. After the Petitioner responded to the Respondents' respective motions, the United States Magistrate Judge conducted a hearing on March 20, 1991. During that hearing the parties agreed that the Magistrate Judge would decide the Respondents' motions solely on the motion papers, exhibits, and legal memoranda without resort to oral arguments.

The Magistrate Judge issued his written Report and Recommendation on August 5, 1991, granting all of the

Respondents' motions. The Petitioner timely filed objections to the Magistrate Judge's Report. *See*, 28 *U.S.C.* § 636(b)(1)(C). The case was heard *de novo* by the United States District Court Judge who, by order dated January 10, 1992, adopted the Magistrate Judge's Report and Recommendation as the Order of the District Court.

The Petitioner timely appealed the District Court's Order to the United States Court of Appeals for the Fourth Circuit. The Court of Appeals affirmed the District Court's Order in an unpublished *per curiam* opinion rendered on November 10, 1993. The Petitioner filed a Petition for Rehearing which the Fourth Circuit denied on December 16, 1993. The Petitioner now seeks a Writ of Certiorari to review the decisions below which dismissed his action against all of the Respondents, including the JIPSD, its Commissioners, Welch, and Quinn.

SUMMARY OF THE ARGUMENT

The Petitioner's claim failed to state any facts to support a claim that any act or omission of the JIPSD, it Commissioners, Welch, or Quinn caused his incarceration. In addition, the Petitioner's claim that *S.C. Code Ann.* § 6-11-1250 and the JIPSD Wastewater Resolution were unconstitutional was by the doctrine of *res judicata*. The lower courts properly dismissed the Petitioner's Complaint.

ARGUMENT

This action came before the District Court on a Rule 12(b)(6), *FRCP*, Motion to Dismiss the Petitioner's Complaint brought by Respondents JIPSD, its Commissioners, Welch, and Quinn. The Petitioner alleged that his constitutional rights were violated by JIPSD's institution and pursuit of a lawsuit pursuant to *S.C. Code Ann.* § 6-11-1250 (1976) seeking an injunction against the Petitioner for his voluntary failure to connect to the JIPSD's municipal sewer line. The Petitioner asserted that *S.C. Code Ann.* § 6-11-1250 was unconstitutional because it permitted "punishment" for acts committed prior to the statute's enactment. More specifically, the Petitioner claimed that he had a "proper septic system" at the time of the promulgation of the JIPSD's Wastewater Collection System and Rate Resolution and, therefore, the JIPSD wrongfully prosecuted and wrongfully caused him to be incarcerated for failing to connect to an "improper crushed sewer line". The JIPSD's Motion to Dismiss was based on the ground that the Petitioner's claim failed to state a claim upon which relief could have been granted because the claim was barred by the application of the doctrine of *res judicata.*

The JIPSD's Motion to Dismiss was originally heard by the United States Magistrate Judge, on March 21, 1991. The Magistrate Judge issued a written Report and Recommendation on August 5, 1991 recommending that the Petitioner's Complaint be dismissed. The Petitioner excepted to the Report. By Order, dated and filed January 10, 1992, the District Court adopted the Report and Recommendation and directed that the Petitioner's Complaint be dismissed.

The Petitioner then timely appealed the District Court's Order to the Fourth Circuit. The Court of Appeals affirmed the District Court's Order in an unpublished *per curiam* opinion. The Fourth Circuit denied the Petitioner's Petition for Rehearing.

History Of The Prior Litigation

A. *PSD v. Seigel*

The JIPSD first commenced litigation against the Petitioner on or about November 28, 1984, seeking a mandatory injunction to compel the Petitioner to connect to the JIPSD's sewer system.[3] A trial was held on the JIPDS's request for a Mandatory Injunction. On March 3, 1986, the Honorable Edward B. Cottingham ("Judge Cottingham"), issued his Order requiring the Petitioner to tie into JIPSD's sewer system at his own expense within thirty (30) days of his receipt of a copy of the Order. Judge Cottingham heard, but rejected, the Petitioner's argument that the sewer system was unhealthy and that it was technically not feasible for the Petitioner to tie into the system.

The Petitioner appealed Judge Cottingham's Order. The South Carolina Court of Appeals affirmed that decision.[4] Judgment was then entered against the Petitioner on March 25, 1987. By Order dated October 17, 1988, Judge Howell issued a Rule to Show Cause and Order requiring the Petitioner to appear before the Court to

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[3] *See*, Footnote 1, *supra*.

[4] *See, James Island Public Service District v. Wilburt A. Seigel* (S.C. Ct. App. Memo. Op. No. 87-MO-023, filed March 9, 1987).

show cause why he should not be held in contempt for failing to comply with Judge Cottingham's Order as affirmed by the South Carolina Court of Appeals.

Judge Howell held a hearing on the Rule to Show Cause on October 26, 1988. On November 1, 1988, Judge Howell issued an Order denying the Petitioner's Motion to Vacate Judge Cottingham's Order and denying Petitioner's Motion to Quash the Rule to Show Cause. Furthermore, Judge Howell found the Petitioner in contempt for his willful failure to tie into the sewer system and sentenced him to six (6) months in jail. Judge Howell, nevertheless, gave the Petitioner sixty (60) days from the date of the hearing to comply with the contempt order by properly tying into the JIPSD sewer system. The Petitioner then petitioned the South Carolina Supreme Court for a Writ of Supersedeas to stay Judge Howell's contempt sentence. The Supreme Court denied the petition on December 16, 1988.

On January 6, 1989, Judge Howell modified his earlier Order and directed the Petitioner to begin serving his six (6) month term on January 11, 1989. The Petitioner served only one (1) night at Lieber. On January 12, 1989, Judge Howell stayed the Petitioner's sentence until another hearing could be held on February 16, 1989. The Petitioner, now through counsel, requested that Judge Howell enter a new Contempt Order abating the incarceration order because of the Petitioner's poor health. Judge Howell revised his Order and substituted a monetary fine in lieu of incarceration.

B. ***Seigel v. PSD***

In February 1986, the Petitioner instituted a lawsuit against the JIPSD arising out of events dating back to 1982.[5] In 1982, a Charleston County magistrate issued an arrest bench warrant for the Petitioner, pursuant to an affidavit filed by JIPSD representatives, alleging the Petitioner had violated the JIPSD Wastewater Resolution by failing to connect to the sewer system. The warrant, asserting a misdemeanor violation, was served on the Petitioner and he was arrested. At trial the Petitioner was found guilty of failing to tie into the sewer system. He appealed the decision to the Circuit Court which reversed his conviction. The Circuit Court held that the penalty provisions of 1961 *Act No.* 498 were unconstitutional because the act had been passed, as a special law, but had later been displaced by a general law; *S.C. Code Ann.* § 6-11-1250. That section provides for a mandatory injunction requiring a citizen to connect. *Id.* No appeal was taken from that decision.

The Petitioner then filed his Complaint in *Seigel v. JIPSD* alleging abuse of process, malicious prosecution, false arrest, and violations of 42 *U.S.C.* § 1983. The underlying theory of those claims was that the JIPSD acted improperly in pursuing the Magistrate's Court misdemeanor complaint against the Petitioner for his failure to connect to the sewer system. He alleged that the JIPSD allegedly knew or should have known that the JIPSD's

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[5] *See, Wilburt A. Seigel v. James Island Public Service District* (Civil Action No. 86-CP-10-802, Charleston County Court of Common Pleas) (*"Seigel v. JIPSD"*).

enabling act, 1961 *Act No.* 498, § 9 (penalties section), was unconstitutional.

The JIPSD removed the case to federal court[6] and moved to dismiss the 42 *U.S.C.* § 1983 claim, as well as, the state claims. The District Court granted the JIPSD's motion to dismiss the civil rights claims, holding that 1961 *Act No.* 498, and *S.C. Code Ann.* §§ 6-11-1251, 1250, and 1260 (1976) were constitutional. The Petitioner did not appeal. The remaining state claims were remanded to state court. Judge Howell later granted summary judgment to the JIPSD on December 29, 1988.

I. THE PETITIONER'S COMPLAINT WAS DEVOID OF ANY FACTS SUFFICIENT TO STATE A CAUSE OF ACTION UNDER 42 *U.S.C.* § 1983 AGAINST THE JIPSD, IT COMMISSIONERS, WELCH, OR QUINN.

The alleged basis for the Petitioner's 42 *U.S.C.* § 1983 damages claim against the JIPSD, its Commissioners, Welch, and Quinn was set forth in Paragraph 9 of the Petitioner's Complaint. He alleged that:

> All Defendants independently, or in concert, did cause [the Petitioner] to be wrongfully incarcerated, processed, mugged, fingerprinted, hurtful physical examination, held in maximum security, transported by State Prison guards to places

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[6] *See, Wilburt A. Seigel v. James Island Public Service District* (Civil Action No. 2:86-775-8, United States District Court for the District of South Carolina).

> unknown, causing infliction of mental and emotional distress, real and extreme mental disturbance, humiliation, publicity, cruel and unusual punishment, all intentional interference with the person of [the Petitioner].

Id. The Petitioner contended the JIPSD and its officials, among others, "caused" him to be incarcerated. His own allegations and Judge Howell's Order, however, proved otherwise. Judge Howell found the Petitioner in contempt of court for his *willful* failure to tie into the JIPSD sewer system. Judge Howell ordered his incarceration, not the JIPSD. The JIPSD did not even request an Order of Incarceration, but only such sanctions as the court deemed necessary to insure compliance with outstanding Orders and Judgment. Judge Howell, after allowing the Petitioner sixty (60) days from the date of the hearing to properly tie into the sewer system, determined, in his discretion, that incarceration was the most appropriate sanction.

It is evident from the face of the Complaint that the JIPSD did not cause the Petitioner to be transported to or incarcerated in Lieber. As a matter of law the JIPSD lacked authority to cause the Petitioner to be incarcerated. The Petitioner's Complaint failed to state any facts to the contrary.

II. THE PETITIONER'S CLAIMS THAT THE JIPSD WASTEWATER RESOLUTION AND *S.C. CODE ANN.* § 6-11-1250 WERE UNCONSTITUTIONAL WAS BARRED BY THE DOCTRINE OF *RES JUDICATA*.

A motion pursuant to Rule 12(b)(6), *FRCP*, should be granted if an affirmative defense is apparent from the face of the Complaint. The allegations in the Petitioner's Complaint before the District Court made reference to prior litigation between the parties.[7] Dismissal of the Complaint was proper since the affirmative defense of *res judicata* was apparent from the face of the Complaint. *Res judicata* is an affirmative defense which may be raised by means of a Rule 12(b), *FRCP*, motion, particularly if it is clear from the face of the Complaint or from the record of the prior case. *Fletcher v. Bryan*, 266 F.2d 72 (4th Cir. 1959). *See also, Mann v. Peoples First Nat. Bank & Trust Co.*, 209 F.2d 570 (4th Cir. 1954); *Ellis v. Cates*, 178 F.2d 791 (4th Cir. 1952).

In ruling on a defense of *res judicata*, the District Court was required to consider three (3) issues: (a) whether the issue in this action was identical to the one decided in the prior proceeding; (b) whether the prior litigation reached a final judgment on the merits, and (c) whether the party against whom the plea was asserted was a party, or in privity with a party, to the prior

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[7] Material submitted as part of the Complaint and documents from the public record was properly considered by the District Court in ruling on the 12(b)(6), *FRCP*, Motion. *Quiller v. Barclays American Credit, Inc.*, 727 F.2d 1067 (11th Cir. 1984); *Amfac Mfg. Corp. v. Arizona Mall of Tempe*, 583 F.2d 426 (9th Cir. 1978); *Phillips v. Bureau of Prisons*, 591 F.2d 966 (D.C.Cir. 1979).

adjudication. *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation,* 402 U.S. 313, 323-324 (1971).

The issue of the constitutionality of *S.C. Code Ann.* § 6-11-1250 and of the JIPSD Wastewater Resolution had previously been litigated and decided in state court proceedings. The Petitioner was barred from again raising those issues in this case. In *Allen v. McCurry,* 449 U.S. 90 (1980), this Court outlined the analysis to be applied prior state court adjudications of issues presented in 42 *U.S.C.* § 1983 actions. The *McCurry* Court endorsed the line of cases which held that Section 1983 "presents no categorized bar to the application of *res judicata* and collateral estoppel concepts." *Id.* 449 U.S. 90, 97. To hold otherwise, noted this Court, would be to infer "a general distrust of the state courts to render correct decisions on constitutional issues." *Id.* 449 U.S. 90, 104.

The Petitioner had previously argued that *S.C. Code Ann.* § 6-11-1250 and the JIPSD Wastewater Resolution were unconstitutional. The arguments were heard and rejected. The Petitioner argued these statutes were unconstitutional in *Seigel v. JIPSD* the prior state court action. He had a full, fair, and reasonable opportunity to litigate those issues. Based upon the facts stated in the Complaint and the judicial rulings that were a matter of public record, those claims were properly dismissed by the lower courts. The Petitioner's claim was clearly barred by the application of *res judicata.*

The Petitioner's Complaint in that case alleged that the JIPSD's Enabling Act, 1961 *Act No.* 498 was unconstitutional and further that no such criminal charges

could be brought under 1965 *Act No.* 397.[8] The JIPSD removed that case to federal court and moved to dismiss the 42 *U.S.C.* § 1983 claim as well as the state claims. The District Court granted the JIPSD's motion to dismiss the 42 *U.S.C* § 1983 claims, holding that 1961 *Act No.* 498, and *S.C. Code Ann.* §§ 6-11-1251, 1250 and 1260 were constitutional statutes. No appeal was taken. That Order remained the law of the case. The lower courts properly accepted that proposition in this matter.

Judge Howell cited the District Court's decision in *Seigel v. JIPSD* in his Order granting summary judgment to the JIPSD on Petitioner's state claims for malicious prosecution and abuse of process:

> There is no basis to support the [Petitioner's] claim that the [JIPSD] should have known from this language that a judge would later rule that § 9 of *Act No.* 498 was unconstitutional.
>
> . . .
>
> Indeed, Federal Chief District Court Judge, Sol Blatt, Jr. has reviewed the provisions in question and held them to be constitutional, stating 'well that's all a part of the regulations, that they refer to. When you read all of those, I am convinced that 498 was not superseded and 498 is still in force and in effect it's constitutional.'

Subsequently, the Petitioner appealed Judge Howell's order granting summary judgment. The constitutionality of *S.C. Code Ann.* § 6-11-1250 was again addressed. The South Carolina Supreme Court affirmed Judge Howell's

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[8] That act is now codified as *S.C. Code Ann.* § 6-11-1250 *et. seq.*

ruling on summary judgment[9] and the Petitioner's petition for rehearing was denied on January 25, 1991.[10]

This constitutionality issue was settled at that point. The lower courts have now settled it again. The Petitioner had a full and fair opportunity to litigate the issue of the constitu-tionality of these statutes, before both state and federal judges. Neither the District Court's nor Judge Howell's decisions have been reversed nor vacated. The lower courts determined that the Petitioner should not be allowed to relitigate issues which have been actually litigated and directly determined.

CONCLUSION

The Petitioner's claim failed to state any facts to support a claim that any act or omission on the part of the JIPSD, it Commissioners, Welch, or Quinn caused his incarceration. His claim that *S.C. Code Ann.* § 6-11-1250 and the JIPSD Wastewater Resolution are unconstitutional has already been actually litigated in appropriate judicial forums. The statutes have been determined to be constitutional. The lower courts properly dismissed the Petitioner's Complaint for failure to state a claim. Consequently, these Respondents respectfully request that the

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[9] *See,* South Carolina Supreme Court Opinion No. 90-MO-323.

[10] *See,* Davis Advance Sheet No. 3, dated February 9, 1991 at p.3.

Court deny the Petition for Writ of Certiorari filed by the Petitioner.

Respectfully submitted,

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Dated: April 12, 1994